

February 4, 2025

VIA ECF

Hon. Dora L. Irizarry, U.S.D.J.
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: McDonald's Corp. v. Vanderbilt Atlantic Holdings LLC, No. 19-cv-6471

Dear Judge Irizarry:

Counsel for Plaintiff McDonald's Corporation and Counsel for Defendant Vanderbilt Atlantic Holdings, LLC jointly submit this letter to update the Court on the status of certain evidentiary disputes between the parties raised in Plaintiff's January 7, 2025 letter (Dkt. 101.). At the pretrial conference on January 15, 2025, the Court directed that the parties file motions *in limine* with respect to those disputes by February 5, 2025. We are pleased to report that the parties have resolved most of the issues, thereby obviating the need for motions on certain issues.

One issue concerned McDonald's request to admit certain of Vanderbilt's pleadings and an appellate brief into evidence. The Court previously ruled that the pleadings and brief are not admissible as evidence and McDonald's respectfully requested that the Court reconsider its decision. The parties have resolved this issue by executing additional stipulations of fact, quoting certain portions of those pleadings and the brief. The stipulations obviate the need to enter the pleadings into evidence. If the Court agrees, the parties respectfully request that the Court so-order the stipulations, which are attached hereto. Based on the stipulations, Vanderbilt will not be filing a motion *in limine* directed to the issue of the admissibility of the pleadings and Second Circuit brief, as McDonald's will not be seeking to use those documents at trial and will remove them from its exhibit list.

The second outstanding issue concerned nine email strings on Vanderbilt's exhibit list, which McDonald's contended were inadmissible hearsay, and Vanderbilt previously suggested might be admissible as "admissions by silence," among other grounds (Exhibits V, Y, VV, WW, XX, KK, AAA, BBB, and OOO).¹ The parties conferred, and Vanderbilt has determined and hereby represents that it does not foresee seeking to admit those documents to which McDonald's has

¹ These exhibit references are to those identified in the Amended Proposed Joint Civil Pretrial Order, filed on January 13, 2025 [ECF No. 106].

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objected under the adoptive admissions exception to the hearsay rule. Vanderbilt, however, contends that such documents are admissible on other grounds, including as admissions by McDonald's or its agents, for purposes of impeachment, or for purposes other than the truth of the matter asserted (and are therefore not hearsay at all). McDonald's reconsidered its position as to these nine exhibits and agreed to withdraw its objections to Exhibits V, Y, VV, WW and XX on the grounds that they are likely to be admissible as party admissions or vicarious admissions. McDonald's also agrees that certain portions of Exhibits KK, AAA, and BBB are likely to be admissible as party admissions and has no objection to the admission of those portions of the email strings. However, McDonald's continues to believe that Exhibit OOO and portions of Exhibits KK, AAA, and BBB are inadmissible hearsay and will be filing a motion *in limine* on this issue. Vanderbilt disagrees that these emails are inadmissible hearsay and will be opposing the motion *in limine*.

Further, the parties are continuing to confer about the admissibility of other exhibits and may withdraw additional objections. The parties will provide the Court with updated exhibit lists reflecting the parties' agreements as to various exhibits prior to trial with the parties' respective submissions of their exhibit binders.

The parties thank the Court for its attention to this matter.

Respectfully submitted,

/s/ Denise Alvarez

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Encl.